IN THE U. S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

IN RE CUMMINS.
IN RE CROCKER.

May 6, 1912.

[196 Fed. 224.]

Bankruptcy (§ 170*)—Payments to Attorney—Legality.—Under Bankr. Act July 1, 1898, c. 541, § 60d, 30 Stat. 562 (U. S. Comp. St. 1901, p. 3446), which provides that if a debtor shall in contemplation of bankruptcy pay money or transfer property to an attorney "for services to be rendered the transaction shall be re-examined by the court on the petition of the trustee or any creditor, and shall only be valid to the extent of a reasonable amount," etc., the payment by a bankrupt to an attorney of a reasonable fee for services in relation to his indebtedness is valid, and not preferential, whether such payment was made before or after the services were rendered.

[Ed. Note.—For other cases, see Bankruptcy, Cent. Dig., §§ 267, 271; Dec. Dig., § 170.*]

In the matter of William J. Cummins, bankrupt. On report of special master as to the claims of Frank L. Crocker. Report confirmed.

Parsons, Closson & McIlvaine and *Samuel S. Koenig,* for trustee.

Crocker & Wickes, for claimant.

MAYER, District Judge. The trustee opposes the confirmation of the report of special master, which, in effect, upholds the transfer of an automobile (agreed to be worth $600) to an attorney for professional services. At the same time the trustee moves that the expenses of the proceeding be paid by the attorney. The special master has reported at length, and I shall refer only to one question involved.

The claimant, Frank L. Crocker, was retained by the bankrupt as his attorney on January 14, 1911, and for some weeks examined into the complicated financial affairs of the bankrupt, evidently hoping to disentangle them, but finally concluding that bankruptcy was inevitable. On February 21, 1911, while in Nashville (where the bankrupt had certain property and interests), the bankrupt, being then without ready funds, transferred an automobile to Mr. Crocker, stating that he would be glad to have Mr.

*For other cases see same topic & § NUMBER in Dec. & Am. Digs. 1907 to date, & Rep'r Indexes.

Crocker take it and sell it, and apply the proceeds on account of disbursements and fees for services rendered and which might thereafter be rendered. Mr. Crocker testified that his services and disbursements down to the date of the transfer amounted to $600, and he does not make any claim for services rendered from that date until April 11, 1911, when the petition in bankruptcy was filed.

Mr. Crocker relies upon section 60d of the Bankruptcy Law, while the trustee urges that the transfer was preferential, and is not saved by the section above mentioned because the payment was for services already rendered and not to be rendered. Section 60d is as follows:

"If a debtor shall, directly or indirectly, in contemplation of the filing of a petition by or against him, pay money or transfer property to an attorney and counselor at law, solicitor in equity, or proctor in admiralty for services to be rendered, the transaction shall be re-examined by the court on the petition of the trustee or any creditor and shall only be held valid to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the trustee for the benefit of the estate."

The contention of the trustee is in effect that, if a debtor in contemplation of the filing of a petition by or against him retains an attorney to advise and act for him, the attorney must then and there get his fee, else he will become a general creditor. In other words, a lawyer is to be deprived of the safeguard of the statute because he has the decency not to insist on an immediate retainer in money or property, and is willing to wait until he can decide what his fee ought to be in the light of service actually rendered. There is no reason why statutes, under familiar canons, cannot be construed sensibly.

The Congress has given the court full power to re-examine such a transaction with a view of ascertaining its good faith, and then determining whether the fee is reasonable. What is meant, by the statute, is that a debtor, under the circumstances therein described, may fully pay an attorney reasonable compensation for services to be rendered, and it is immaterial whether the payment is made at or after the professional engagement is entered into. Upon the re-examination provided for by the statute, it should not be difficult to determine either the bona fides or the reasonableness of the charge. In this case, the attorney acted in strict accord with his professional obligations, and, indeed, his fee was noticeably moderate.

He will not be penalized by an order to pay the expenses of a

proceeding in which he was called upon to defend a proper and well-earned fee.

Note.

This is a decision upon a point of interest to lawyers having bankruptcy litigation, and authority upon the construction of § 60d of the bankruptcy law seems to be neither abundant nor decided. The court here cites not a single case. But we find it laid down in Remington on Bankruptcy, § 2095, that all payments made before bankruptcy to the attorney in contemplation of the institution of bankruptcy proceedings are to be governed by the provisions of § 60d, citing, as impliedly so holding, In re Habegger, 15 A. B. R. 198, 139 Fed. 623. The court here does not seem to think it necessary to waste much argument to show that a payment for services already rendered stands on the same footing with a payment for future services, and we agree with the court. A late case holding that such prepayment is neither a preference nor a fraudulent conveyance is Furth *v.* Stahl, 10 A. B. R. 442, 205 Pa. 439. See also, In re Wood & Henderson, 20 A. B. R. 1, 210 U. S. 246. But prepayment of attorneys' fees by bankrupts is not favored in bankruptcy, as said in one case. In re Blanchard, 20 A. B. R. 417, 161 Fed. 793. And Mr. Remington considers that § 60d applies as well to payments for service rendered as for services to be rendered in the proposed bankruptcy, deducing it impliedly from this § 60d. See § 2094, Remington on Bankruptcy, vol. III.

J. F. M.

SUPREME COURT OF APPEALS OF VIRGINIA.

WHITE *et al. v.* OLD *et al.*

June 13, 1912.

[75 S. E. 182.]

1. Wills (§ 456*)—Construction—Meaning of Words.—Words in a will which have a definite primary meaning must be understood to be used in such sense, unless an intention to use them in another sense manifestly appears.

[Ed. Note.—For other cases, see Wills, Cent. Dig. § 974; Dec. Dig. § 456.*]

2. Wills (§ 499*)—Construction—Meaning of Words—"Niece" or "Nephew."—Testator gave a legacy to his niece Kate, daughter of Dr. H. W., and to Dr. H. W. a specified sum for himself and his other children, and he gave legacies to any niece or nephew whom he had omitted, excepting the children of Dr. H. W., for whom he had made provision. Testator was a widower, who had never had any children, and left surviving him a number of nieces and nephews, and grandnieces and grandnephews, descendants of sisters who died

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.